Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Revision of Part 22 of the Commission's	)	CC Docket No. 92-115
Rules Governing the Public Mobile	)	
Services	)	

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GTE'S COMMENTS AND OPPOSITION

GTE Service Corporation on behalf of
its telephone and wireless companies

Andre J. Lachance
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036
(202) 463-5276

THEIR ATTORNEY

January 20, 1995

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SUMMARY

GTE Service Corporation files its comments and opposition in response to petitions for reconsideration and clarification of the Federal Communications Commission's *Part 22 Rewrite Order.*

GTE concurs with the requests of parties asking the Commission to clarify new section 22.108 by stating that parties are only required to disclose the real party or parties in interest, *that are engaged in the Public Mobile Services.* By leaving this qualifying phrase out of the new section, the Commission has created confusion and uncertainty among license applicants that needs to be addressed on reconsideration.

GTE agrees with the Airtouch/U S West and McCaw petitions that the Commission should eliminate new section 22.929(a)(2), which requires applications for authorization in the Cellular Radiotelephone Service to include "[t]he call sign(s) of other facilities in the same area that are ultimately controlled by the real party in interest to the application." Requiring this information is not necessary in light of the cellular licensing scheme.

GTE supports Airtouch and U S West's petition insofar as it asks the Commission to clarify that sections 22.163(e) and 22.165(e) do not require notification of modifications and additional transmitters for cell sites that are internal to a consolidated CGSA.

GTE agrees with BellSouth that the Commission should adopt a streamlined approach for granting license transfer or assignment applications

resulting from internal corporate changes in organizational structure, whereby such filings would be deemed granted upon filing with the Commission.

The Commission should clarify that only developmental authorizations granted pursuant to section 22.401(b) are major. However, GTE believes that all developmental authorizations for services employing a shared frequency arrangement -- such as air-ground -- should be considered major.

GTE opposes McCaw's request that the Commission reinstate the language of old section 22.1111(a) in place of new section 22.861(a) regarding the emission mask for air-ground transmissions. GTE agrees with McCaw, however, that the Commission should grandfather equipment designed and manufactured prior to January 1, 1995. GTE opposes McCaw's alternative proposal to reduce the transmitter emissions mask of second and higher adjacent channels from 50 to 46 decibels below the total emission power.

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GTE'S COMMENTS AND OPPOSITION

GTE Service Corporation ("GTE") on behalf of its telephone and wireless companies pursuant to section 1.429 of the Commission's Rules[1] hereby files its comments and opposition in response to petitions for reconsideration and clarification of the Federal Communications Commission's ("FCC" or "Commission") *Report and Order* in the above-captioned proceeding.[2]

I. BACKGROUND

On December 19, 1994, GTE filed a petition for reconsideration and clarification in this docket.[3] GTE requested that the Commission reconsider or clarify a number of the rules adopted in the *Part 22 Rewrite Order.* More than

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1 47 C.F.R. § 1.429.

2 Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, CC Docket No. 92-115; Amendment of Part 22 of the Commission's Rules to Delete Section 22.119 and Permit the Concurrent Use of Transmitters in Common Carrier and Non-common Carrier Service, CC Docket No. 94-46, RM 8367; Amendment of Part 22 of the Commission's Rules Pertaining to Power Limits for Paging Stations Operating in the 931 MHz Band in the Public Land Mobile Service, CC Docket No. 93-116, *Report and Order* (released September 9, 1994), 59 Fed.Reg. 59,502 (November 17, 1994) (hereinafter "*Part 22 Rewrite Order*").

3 GTE's Petition for Reconsideration and Clarification, CC Docket No. 92-115, filed December 19, 1994 ("GTE Petition").

thirty parties, in addition to GTE, filed petitions for clarification, modification or reconsideration of the *Part 22 Rewrite Order.*

GTE herein states its comments and opposition in response to those petitions. In particular, GTE: (1) concurs with parties that ask the Commission to reconsider its decision in adopting new rule 22.108 as written, which may be interpreted to require license applicants to disclose all parties in interest rather than parties in interest that are engaged in the Public Mobile Services as was explicitly required under old rule section 22.13(a)(1); (2) supports parties asking the Commission to eliminate the section 22.929(a)(2) requirement that cellular carriers submit the call sign of other facilities in the same area controlled by the real party in interest; (3) agrees that the Commission should clarify that modifications and additional transmitters that affect cell sites internal to a consolidated CGSA need not be reported; (4) supports parties asking the Commission to adopt a streamlined approach for *pro forma* assignments and transfers; (5) concurs with petitioners asking the Commission to clarify that only developmental authorizations for experimentation leading to the potential development of a new Public Mobile Service or technology are "major"; and (6) opposes McCaw's request that the Commission reinstate the previous rule regarding the emission mask for air-ground transmission and its request to reduce the transmitter emission mask of second and higher adjacent channels.

II. DISCUSSION

A. GTE Concurs With Parties that Ask the Commission to Make Clear that Section 22.108 Only Requires Disclosure of the Real Party or Parties in Interest that Are Engaged in the Public Mobile Services

In its petition for reconsideration and clarification, GTE requested that the Commission change the language in new section 22.108 to reinstate, from old rule 22.13(a)(1), the qualifying phrase "that are engaged in the Public Mobile Services." Section 22.108 states the disclosure requirement for applications for authorization, and assignments and transfers of authorization. As GTE noted in its petition, the previous disclosure requirement, as codified in former section 22.13(a)(1) of the Commission's Rules, required applicants to disclose only "the real party or parties in interest, that are engaged in the Public Mobile Services."[4]

Three other parties, BellSouth, McCaw, and Western Wireless, also petitioned the Commission to amend new section 22.108 to make clear that applicants must only disclose affiliates and subsidiaries engaged in the Public Mobile Services.[5] These parties argue, generally, that the Commission did not intend to amend the substantive requirements of old rule 22.13(a)(1) in crafting new section 22.108, that requiring large corporate entities to disclose every affiliate and subsidiary would substantially increase the burden on applicants; and that the additional information would serve no relevant purpose in the application review process.[6]

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4 47 C.F.R. § 22.13(a)(1) (1983).

5 *See* Petition for Reconsideration, BellSouth Corporation, BellSouth Enterprises, Inc. ("BellSouth Petition") at 15-16; McCaw Cellular Communications, Inc. Petition for Reconsideration and Clarification ("McCaw Petition") at 7-10; Petition for Reconsideration, Western Wireless Corporation ("Western Wireless Petition") at 2-5.

6 *Id.*

GTE concurs with the requests of these parties. In adopting new rule section 22.108, which omits the qualifying language, the Commission has created confusion and uncertainty among license applicants that needs to be addressed on reconsideration. In the *Part 22 Rewrite Order,* the Commission stated "[t]he intent of the NPRM was to propose the retention of the substance of § 22.13(a)(1) as it existed prior to the NPRM with respect to the disclosure of real parties in interest."[7] Yet, unless the qualifying phrase from the old rule is restored, the language of the new section designed to replace old section 22.13(a)(1) is open to different interpretation. As a result, license applicants cannot help but be confused regarding the scope of the information required to be disclosed under new section 22.108.

GTE believes that the Commission should act to end this confusion by stating on reconsideration that it never intended to change the scope of the disclosure requirement now codified at section 22.108. The Commission should state that parties are only required to disclose the real party or parties in interest, that are engaged in the Public Mobile Services. Such action would be consistent with the Commission's stated intent. Moreover, such action would continue in effect a long-standing disclosure requirement with which parties are familiar. As GTE noted in its petition, the scope of the section 22.13(a)(1) disclosure requirement was clear from the text of the rule, and was explained

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[7] *Part 22 Rewrite Order*, Appendix A, at A-9. The Commission also stated: "[w]e have adopted the substantive provisions of old § 22.13(a)(1) concerning the disclosure of information concerning real parties in interest." *Id.*

further in numerous Commission writings.[8] For these reasons, GTE requests that the Commission state on reconsideration that section 22.108 only requires disclosure of the real party or parties in interest, that are engaged in the Public Mobile Services.

B. The Commission Should Eliminate the Section 22.929(a)(2) Requirement that Cellular Carriers Submit the Call Sign of other Facilities in the Same Area Controlled by the Real Party in Interest

New section 22.929(a)(2) requires applications for authorization in the Cellular Radiotelephone Service to include as an exhibit to the application, "[t]he call sign(s) of other facilities in the same area that are ultimately controlled by the real party in interest to the application."[9] Airtouch/U S West and McCaw Cellular petition the Commission to delete this section.[10] Both the Airtouch/U S West and McCaw petitions note that in the past such information has been required to be provided by non-cellular applicants as a means of determining if the applying entity was requesting additional frequencies through other business affiliations without adequate justification.[11] They argue that this information is

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8 GTE Petition at 12-13, *citing,* Real Party in Interest Disclosure Requirements in the Public Mobile Radio Service, *Public Notice,* Mimeo 1060, 52 R.R.2d 1053 (1982); Application of Jacksonville Cellular Telephone Corp. For a Construction Permit to Establish a New Cellular System to Operate on Frequency Block A in the Domestic Public Cellular Radio Telecommunications Service to Serve the Jacksonville, North Carolina, Metropolitan Statistical Area, File No. 83000-CL-P-258-A-86, DA 87-1505, 64 R.R.2d 426, 428 (1987); Application of Canaan Industries, Inc. For a New System in the Domestic Public Cellular Radio Telecommunications Service on Frequency Block A for the Vineland-Millville-Bridgeton, New Jersey MSA, File No. 59467-CL-P-228-A-86, DA 87-492, 62 R.R.2d 1561, 1563 (1987).

9 47 C.F.R. § 22.929(a)(2).

10 Joint Petition for Reconsideration and Clarification, Airtouch Communications, Inc. and US West Newvector Group, Inc. ("Airtouch/US West Petition") at 7; McCaw Petition at 43-44.

11 Airtouch/U S West Petition at 7, n.12. *See also* McCaw Petition at 43.

not needed in the cellular licensing context because cellular licensees are given the exclusive right to operate on a particular frequency block within a geographic area. Indeed, the Airtouch/U S West petition notes that a similar information requirement has been interpreted by the Commission as not applying to cellular carriers.[12]

GTE agrees with the Airtouch/U S West and McCaw petitions that the Commission should eliminate new section 22.929(a)(2). In light of the cellular licensing scheme, there appears to be no reason to extend this information reporting requirement to Cellular Radiotelephone authorization applicants. Moreover, as Airtouch/U S West indicate, requiring cellular carriers to compile this information would be extremely burdensome on carriers that use a large number of microwave facilities. Accordingly, GTE requests that the Commission grant the Airtouch/U S West and McCaw petitions insofar as they request elimination of new section 22.929(a)(2).

C. The Commission Should Clarify, With Respect to Sections 22.163(e) and 22.165(e), that Modifications and Additional Transmitters that Affect Cell Sites Internal to a Consolidated CGSA Need Not Be Reported

The Commission adopted new section 22.163(e) and 22.165(e) in order to eliminate a notification requirement that it deemed unnecessary. Old section 22.9(d) required licensees to notify the Commission of minor modifications to

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[12] Airtouch/U S West Petition at 7, n.12, *citing,* Amendment of the Commission's Rules for Rural Cellular Service, *Third Report and Order*, 4 FCC Rcd 2440, 2444 (1988). Airtouch/U S West state that the Commission, in this proceeding, ruled that a request for information about ownership and control of other Part 22 radio stations within 40 miles of the proposed site is not applicable to cellular carriers. *Id.*

existing stations and of additional transmitters for existing stations.[13] Notice had been required in order to allow licensees of adjacent systems to assess interference potential with their systems.[14] The Commission found, however, that minor station modifications and transmitters installed at internal cell sites in a Cellular Geographic Service Area ("CGSA") pose no interference problems for adjacent systems.[15] Accordingly, it adopted sections 22.163(e) -- pertaining to minor modifications to existing stations -- and 22.165(e) -- pertaining to additional transmitters for existing stations -- in order to change its rules to require notification only for the addition or modification of cell sites that form a CGSA boundary.[16]

Airtouch and U S West jointly petition the Commission to clarify that sections 22.163(e) and 22.165(e) do not require notification of modifications and additional transmitters for cell sites that are internal to a consolidated CGSA. These rules, as written, clearly indicate that modifications and additional transmitters that change the CGSA boundary must be reported to the Commission. They do not, however, affirmatively state that, in the case of a consolidated CGSA, no notice is required where the CGSA boundary is not affected. Thus, although the Commission's intent is clear, there is some

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13 47 C.F.R. § 22.9(d) (1993).

14 *Part 22 Rewrite Order* at 13-14.

15 *Id.* at 14.

16 *Id.* at 13.

potential for dispute as to whether notice of modifications and additional transmitters entirely internal to a consolidated CGSA is required.

GTE agrees with Airtouch and U S West, that notification of the addition or modification of cell sites internal to a consolidated CGSA boundary is unnecessary. GTE therefore supports the Airtouch/U S West petition insofar as it seeks clarification that such notice is not required.

D. The Commission Should Adopt a Streamlined Approach for *Pro Forma* Assignments and Transfers

BellSouth, in its petition, asks the Commission to adopt a streamlined approach for handling changes in organizational structure within large corporations. It contends that in large corporations with many subsidiaries, the name of a licensee may change frequently without affecting the ultimate ownership or control of the license.[17] BellSouth states that section 310(d) of the Communications Act, which authorizes the Commission to review station license authorization and transfer applications, is concerned primarily with the qualifications of those who will own or control a radio station prior to their assuming that position.[18] It claims that because the Commission has already passed on the qualifications of the controlling entity, *pro forma* transfers or assignments should not require prior approval.

Accordingly, BellSouth petitions the Commission to adopt a presumption that *pro forma* transfers or assignments will be granted consistent with the public

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17 BellSouth Petition at 11-12.

18 *Id.* at 12, *citing,* 47 U.S.C. § 310(d).

interest, and to eliminate a waiting period for granting applications for *pro forma* transactions. Specifically, it asks the Commission to adopt a rule whereby *pro forma* transfers and assignments would be deemed granted upon filing with the Commission, subject to reconsideration by the Commission within thirty days of the filing date.[19]

GTE agrees with BellSouth that the Commission should adopt a streamlined approach for granting license transfer or assignment applications resulting from internal corporate changes in organizational structure. Prior review is not necessary when the entity controlling the radio license does not change. Moreover, GTE agrees with BellSouth that streamlining the review process for *pro forma* transactions would serve the public interest by enabling businesses to make internal organizational changes necessary for their operation without waiting for FCC approval. Accordingly, GTE requests that the Commission grant the BellSouth and Airtouch/U S West petitions insofar as they seek streamlined treatment for *pro forma* license transfers and assignments.

E. The Commission Should Clarify that Only Developmental Authorizations for Experimentation Leading to the Potential Development of a New Public Mobile Service or Technology are Considered Major

Airtouch and U S West, in their joint petition, note that while the Commission's Rules would appear to treat only developmental authorizations authorized pursuant to new section 22.401(b) as "major," this reading of the

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[19] *Id.* at 13. Airtouch and U S West jointly make a similar request. Airtouch/U S West Petition at 4-5.

Commission's Rules conflicts with FCC Form 600 which appears to classify *all* requests for developmental authorizations as "major" applications.[20]

Airtouch and U S West argue that new section 22.123(b) provides that "[a]pplications are major if they request a developmental authorization pursuant to § 22.409 of this part, or a regular authorization for facilities operating under a developmental authorization."[21] Section 22.409, they note, pertains only to developmental authority "to construct and operate transmitters for the purpose of developing a new Public Mobile Service or a new technology not regularly authorized under this part . . ."[22] As such, they argue, section 22.409 deals only with those developmental authorizations set forth in section 22.401(b).[23] It stands to reason, therefore, that developmental authorizations issued pursuant to sections 22.401(a) and (c) are not "major authorizations."

To rectify the conflict between the rules and Form 600, Airtouch and U S West petition the Commission to clarify that only developmental authorizations granted pursuant to section 22.401(b) are major, and to modify Form 600 accordingly. Should the Commission decide to treat all requests for

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20 Airtouch/U S West Petition at 14-17.

21 47 C.F.R. § 22.123(b).

22 47 C.F.R. § 22.409.

23 47 C.F.R. §22.401(b). Section 22.401 authorizes the Commission to grant developmental authorizations for three purposes: "(a) Field strength surveys to evaluate the technical suitability of antenna locations for stations in the Public Mobile Services; (b) Experimentation leading to the potential development of a new Public Mobile Service or technology; or (c) Stations transmitting on channels in certain frequency ranges, to provide a trial period during which it can be determined whether such stations can operate without causing excessive interference to existing services."

developmental authorization as major, notwithstanding the language in the above-referenced sections, they ask the Commission to reconsider this decision.[24]

GTE agrees with Airtouch and U S West that, for most Part 22 services, only developmental authorizations granted pursuant to sections 22.401(b) (and section 22.409(b)) were intended to be considered "major authorizations." GTE believes that the analysis employed in the Airtouch/U S West petition on this point is correct. GTE therefore joins Airtouch and U S West in asking the Commission to clarify that Form 600 is in error and that only authorizations issued pursuant to section 22.401(b) are major.

GTE believes, however, that all developmental authorizations for services employing a shared frequency arrangement -- such as air-ground -- should be considered major. Channel interference is a major concern of shared frequency service providers. Consequently, developmental authorizations for such services require close scrutiny.

F. The Commission Should Retain New Rule 22.861(a) Regarding the Emission Mask for Air-Ground Transmissions and Should Not Reduce the Transmitter Emissions Mask for Second and Higher Adjacent Channels

McCaw, on behalf of its Claircom subsidiary, requests that the Commission reconsider new section 22.861(a) and reinstate the previous rule

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[24] Airtouch/U S West Petition at 15-16.

governing the emission mask for air-ground transmissions.[25] New section 22.861(a) provides:

> The power of any emission in each of the adjacent channels must be at least 30 decibels below the power of the total emission. The power of any emission in any of the channels other than the one being used and the adjacent channels must be at least 50 dB below the *power of the total emission*.[26]

The old rule, previous section 22.1111(a), by contrast, provided that the power of any emission in any of the channels other than the one being used and the adjacent channels must be at least 50 decibels below the *peak envelope power* of the main emission.[27]

McCaw argues that air-ground providers like Claircom have had their equipment designed, manufactured and type accepted based on the emission limit specifications set forth in the previous Commission rule. McCaw contends that the new rule requires the out of channel performance to be about 4.5 decibels better than the old rule, and that upgrading its equipment to meet the new standard will cost millions of dollars.[28]

Accordingly, McCaw asks the Commission to either reinstate previous rule section 22.1111(a), or to state that the new rule does not apply to equipment designed and manufactured prior to January 1, 1995 -- the effective

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25 McCaw Petition at 38-41.

26 47 C.F.R. § 22.861(a) (emphasis added).

27 47 C.F.R. § 22.1111(a) (1993).

28 McCaw Petition at 39-40.

date of the new rule.[29] Alternatively, McCaw requests that the Commission revise section 22.861(a) to require that the power of any emission in any of the channels other than the one being used and the adjacent channels be reduced from 50 to 46 decibels below the power of the total emission. It contends that this change to the new rule will compensate for the change in the Commission's measurement method from peak envelope power under the old rule to power of the total emission under the new rule.[30]

GTE opposes McCaw's request that the Commission reinstate the language of old section 22.1111(a) in place of new section 22.861(a). GTE believes that the new emission mask standard set forth in section 22.861(a) will better protect against interference among air-ground licensees. GTE agrees with McCaw, however, that, in order to allow air-ground providers to protect their investment in equipment that may not meet the new standard, the Commission should grandfather equipment designed and manufactured prior to January 1, 1995.

GTE also opposes McCaw's alternative proposal to reduce the transmitter emissions mask of second and higher adjacent channels from 50 to 46 decibels below the total emission power. This proposal has already been raised before the Commission in this proceeding.[31] At that time, GTE opposed Claircom,

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29 *Id.* at 40. McCaw also asks the Commission, in conjunction with the grandfathering approach, to establish a transition period of five years for compliance for new air-ground equipment being manufactured. *Id.*

30 *Id.* at 41.

31 Claircom Comments, CC Docket No. 92-115, filed October 5, 1992, at 8.

arguing that the FCC has recognized that limiting transmitter emissions is key to compliance with the established emissions limits of -130 dBm for the first adjacent and -148 dBm for the higher adjacent channels. Reduction of the transmitter mask would make air-ground systems more susceptible to interference.[32] GTE stated that:

> Assuming only 46 dB second channel performance from a transmitter implies that the desired signal level is -102 dBm and the first adjacent channel level is -132 dBm. If the two adjacent channels are in use then the C/I ration of the desired channel is 25 dB. The margin to threshold is only 13 dB. Systems requiring C/I=20 dB would only have 5 dB of fade margin which can easily be exceeded in the air-to-ground environment. A fade of 13 dB would drop the signal below the established threshold. A transmitter mask of 50 dB for the second adjacent [channel] is necessary to mitigate the effects of interference and fading.[33]

McCaw, on behalf of Claircom, is attempting to resurrect its request to reduce the transmitter emissions mask of second and higher adjacent channels without substantiation. Accordingly, GTE respectfully requests that the Commission not adopt McCaw/Claircom's alternative proposal to reduce the transmitter emissions mask.

III. CONCLUSION

For the reasons stated above, in reponse to petitions for reconsideration and clarification of the *Part 22 Rewrite Order,* GTE: (1) concurs with parties that ask the Commission to reconsider its decision in adopting new rule 22.108 as written, which may be interpreted to require license applicants to disclose all

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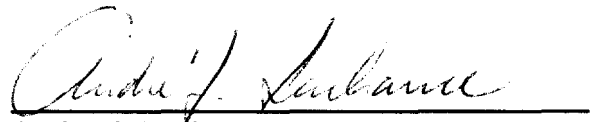
32 GTE Reply Comments, CC Docket No. 92-115, filed November 5, 1992, at 6.

33 *Id.*

parties in interest, rather than parties in interest that are engaged in the Public Mobile Services as was explicitly required under old rule section 22.13(a)(1); (2) supports parties asking the Commission to eliminate the section 22.929(a)(2) requirement that cellular carriers submit the call sign of other facilities in the same area controlled by the real party in interest; (3) agrees that the Commission should clarify that modifications and additional transmitters that affect cell sites internal to a consolidated CGSA need not be reported; (4) supports parties asking the Commission to adopt a streamlined approach for *pro forma* assignments and transfers; (5) concurs with petitioners asking the Commission to clarify that only developmental authorizations for experimentation leading to the potential development of a new Public Mobile Service or technology are "major"; and (6) opposes McCaw's request that the Commission reinstate the previous rule regarding the emission mask for air-ground transmission and its request to reduce the transmitter emission mask of second and higher adjacent channels.

Respectfully submitted,

GTE Service Corporation and its telephone and wireless companies



Andre J. Lachance
1850 M. Street, N.W.
Suite 1200
Washington, D.C. 20036

January 20, 1995

Their Attorney

Certificate of Service

I, Judy R. Quinlan, hereby certify that copies of the foregoing "GTE's Comments and Opposition" have been mailed by first class United States mail, postage prepaid, on the 20th day of January, 1995 to all parties of record:

Judy R. Quinlan